

**REMARKS**

**I. Interview**

Applicants thank the Examiner for the courtesies extended during the personal interview on November 2, 2005, with Applicants' undersigned representative. The substance of the interview is accurately reflected in the Interview Summary.

**II. Status of the Claims**

Claims 95, 105-116, 118, 124-140, 144, and 148-154 have been canceled herein, without prejudice or disclaimer. Claims 1-78, 80-86, 88, 93, 94, 99-104 were previously canceled. Claims 79, 117, and 141 have been amended to more particularly point out and distinctly claim that which Applicants consider to be the invention. For the Examiner's convenience, Applicants attach herewith Appendix A, which is a marked up version of claims 79, 117, and 141, showing the changes to these claims relative to the claims as previously presented in the October 20, 2005, Amendment. Claims 155-157 have been added. Claims 79, 87, 89-92, 96-98, 117, 119-123, 141-143, 145-147 and 155-157 are now pending in this application.

Support for each amendment to each of claims 79, 117, and 141, and each element of new claims 155-157, can be found in the original specification and claims, as set forth in detail in the Supplemental Table 1, below. Applicants note that support for each element of claims 79, 117, and 141 as previously presented in the October 20, 2005, Amendment was set forth in the Table 1 therein, and as such, Applicants herein are only supplementing that information to the extent that current amendments to each of these claims recite limitations not previously addressed in the October 20, 2005,

Amendment. Applicants note that claims 79, 117, and 141 in Supplemental Table 1 are the marked-up versions, as found in Appendix A attached herewith, to assist the Examiner's comparison.

In Supplemental Table 1, references to the original specification and claims are made with respect to column and line numbers in U.S. Patent No. 5,985,297 ("the '297 patent"), the specification of which is identical to the present reissue application. Since all of the inventions recited in present claims 79, 87, 89-92, 96-98, 117, 119-123, 141-143, 145-147 and 155-157 are reasonably conveyed by the specification and original claims, the written description requirement under 35 U.S.C. § 112, first paragraph, is satisfied for each claim, and there is no issue of new matter.

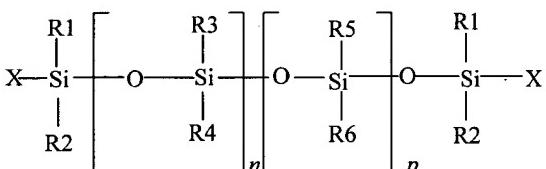
#### SUPPLEMENTAL TABLE 1

Claim/Element	Support in Original Application
<p>79. A cosmetic composition comprising from 2% to 50% of at least one silicone gum, at least one crosslinked silicone, at least one pigment in an amount <u>up to ranging from 0.5% to 15%</u>, <del>optionally at least one filler in an amount up to 30%,</del> and at least one gelling agent, wherein said at least</p>	<p>- 0.5% to 15% Pigment → throughout, e.g., col. 3, lines 24-39 and issued claim 1; see also, e.g., col. 1, lines 58-62, wherein the pigments are described as "preferably" being present in an amount of 0.5% to 15%</p> <p>- Removal of filler → see, e.g., col. 3, line 52, wherein the range of fillers is given as 0-30%, thereby conveying that fillers may be present in an amount of 0%, i.e. not present</p>

Claim/Element	Support in Original Application
<p>one silicone gum is of the formula:</p> $  \begin{array}{ccccccccc}  & R_1 & & R_3 & & R_5 & & R_1 \\  &   & &   & &   & &   \\  X - Si - & O - & Si - & O - & Si - & O - & Si - X \\  &   & &   & &   & &   \\  & R_2 & & R_4 & & R_6 & & R_2 \\  & & & n & & & & p \\  \end{array}  $ <p>in which</p> <p>R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;</p> <p>R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;</p> <p>X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and</p> <p>n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and</p> <p>wherein said cosmetic composition is anhydrous and water-resistant.</p>	
<p>117. A cosmetic composition comprising:  <u>at least from 2% to 50%</u> of at least one silicone gum;</p> <p>at least one crosslinked silicone;      at least one gelling agent;      optionally at least one filler in an amount up to 30%; and</p> <p>at least one pigment in an amount <u>up to ranging from 0.5% to 15%</u>;</p>	<p>- 2% to 50% silicone gum → throughout, e.g., col. 2, lines 10-14, and issued claim 1</p> <p>- 0.5% to 15% Pigment → throughout, e.g., col. 3, lines 24-39 and issued claim 1; see also, e.g., col. 1, lines 58-62, wherein the pigments are described as "preferably" being present in an amount of 0.5% to 15%</p>

Claim/Element	Support in Original Application
<p>wherein said at least one silicone gum is of the formula:</p> $  \begin{array}{ccccccc}  & R_1 & & R_3 & & R_5 & R_1 \\  &   & &   & &   &   \\  X-Si-O-Si-O-Si-O-Si-X \\  &   & &   & &   &   \\  & R_2 & & R_4 & & R_6 & R_2 \\  & & [n] & & & p &  \end{array}  $ <p>in which</p> <p>R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;</p> <p>R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;</p> <p>X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and</p> <p>n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and</p> <p>wherein said cosmetic composition is anhydrous and water-resistant.</p>	
<p>141. A cosmetic composition comprising:  <u>at least from 2% to 50%</u> of at least one silicone gum;</p> <p>at least one crosslinked silicone;</p> <p>at least one filler in an amount up to 30%; and</p> <p>at least one pigment in an amount <u>up to ranging from 0.5% to 15%</u>;</p>	<p>- 2% to 50% silicone gum → throughout, e.g., col. 2, lines 10-14, and issued claim 1</p> <p>- 0.5% to 15% Pigment → throughout, e.g., col. 3, lines 24-39 and issued claim 1; see also, e.g., col. 1, lines 58-62, wherein the pigments are described as "preferably" being present in an</p>

Claim/Element	Support in Original Application
<p>wherein said at least one silicone gum is of the formula:</p> $  \begin{array}{ccccccc}  & R_1 & & R_3 & & R_5 & R_1 \\  X-Si-O-Si-O-Si-O-Si-X \\    &   &   &   &   &   \\  R_2 & R_4 & n & R_6 & p & R_2  \end{array}  $ <p>in which</p> <p>R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;</p> <p>R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;</p> <p>X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and</p> <p>n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and</p> <p>wherein said cosmetic composition is anhydrous and water-resistant.</p>	<p>amount of 0.5% to 15%</p>
<p>155. A cosmetic composition according to claim 79, further comprising at least one filler in an amount up to 30%.</p>	<p>- Filler → throughout, e.g., col. 3, lines 51-57, issued claim 1 and claim 79; see, e.g., col. 3, line 52, wherein the range of fillers is given as 0-30%</p>
<p>156. A cosmetic composition comprising</p>	<p>- Cosmetic composition → throughout; see, e.g., col. 1, line 59 and col. 3, line 58 to col. 4, line 22, wherein additives, processes for manufacture, and formulations are all given with respect to</p>

Claim/Element	Support in Original Application
from 2% to 50% of at least one silicone gum,	cosmetic compositions
at least one crosslinked silicone,	- 2% to 50% silicone gum → throughout, e.g., col. 2, lines 10-14, and issued claim 1
at least one pigment in an amount ranging from 0.5% to 15%,	- Crosslinked silicone → Examples 2-5 at col. 4, line 64 to col. 6, line 29
and at least one modified clay,	- 0.5% to 15% Pigment → throughout, e.g., col. 3, lines 24-39 and issued claim 1; see also, e.g., col. 1, lines 58-62, wherein the pigments are described as "preferably" being present in an amount of 0.5% to 15%
wherein said at least one silicone gum is of the formula:	<ul style="list-style-type: none"> <li>- Modified clay → throughout, e.g., col. 3, lines 65-67 and Examples 1-3, disclosing the modified clay bentone</li> <li>- Formula → throughout, e.g., col. 2, lines 10-63 and issued claim 1</li> </ul>
 <p>in which</p> <p>R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;</p> <p>R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and</p>	

Claim/Element	Support in Original Application
<p>aryl radicals;</p> <p>X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and</p> <p>n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and</p> <p>wherein said cosmetic composition is anhydrous and water-resistant.</p>	<p>- Anhydrous and water-resistant → throughout, e.g., col. 1, lines 8-10 and lines 52-67</p>
<p>157. A cosmetic composition comprising:</p> <p>from 2% to 50% of at least one silicone gum;</p> <p>at least one crosslinked silicone;</p> <p>at least one modified clay;</p> <p>optionally at least one filler in an amount up to 30%; and</p>	<p>- Cosmetic composition → throughout; see, e.g., col. 1, line 59 and col. 3, line 58 to col. 4, line 22, wherein additives, processes for manufacture, and formulations are all given with respect to cosmetic compositions</p> <p>- 2% to 50% silicone gum → throughout, e.g., col. 2, lines 10-14, and issued claim 1</p> <p>- Crosslinked silicone → Examples 2-5 at col. 4, line 64 to col. 6, line 29</p> <p>- Modified clay → throughout, e.g., col. 3, lines 65-67 and Examples 1-3, disclosing the modified clay bentone</p> <p>- Filler → see, e.g., col. 3, line 52, wherein the range of fillers is given as 0-30%, thereby conveying that fillers may be present in an amount of 0%, i.e. not present, and are therefore an optional component and when present, is in an amount up to</p>

Claim/Element	Support in Original Application
<p>at least one pigment in an amount ranging from 0.5% to 15%;</p> <p>wherein said at least one silicone gum is of the formula:</p> $  \begin{array}{ccccccc}  & R_1 & & R_3 & & R_5 & \\  X-Si & -O- & Si & -O- & Si & -O- & Si-X \\    &   &   &   &   &   \\  R_2 & R_4 & n & R_6 & & p & R_2 \\  \end{array}  $ <p>in which</p> <p>R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;</p> <p>R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;</p> <p>X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and</p> <p>n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and</p> <p>wherein said cosmetic composition is anhydrous and water-resistant,</p> <p>and wherein said cosmetic composition is a lip composition.</p>	<p>30%</p> <p>- 0.5% to 15% pigment → throughout, e.g., col. 3, lines 24-39 and issued claim 1; see also, e.g., col. 1, lines 58-62, wherein the pigments are described as "preferably" being present in an amount of 0.5% to 15%</p> <p>- Formula → throughout, e.g., col. 2, lines 10-63 and issued claim 1</p> <p>- Anhydrous and water-resistant → throughout, e.g., col. 1, lines 8-10 and 52-67</p> <p>- Lip composition → see, e.g., col. 4, line 21 and Example 4</p>

**III. Supplemental Reissue Oath/Declaration**

Applicants do not believe that a Supplemental Reissue Oath/Declaration is required in this case pursuant to M.P.E.P. § 1414.01. In this regard, Applicants note that at least one error previously relied upon is still being relied upon in the Supplemental Reissue Oath/Declaration filed herewith. However, as the Examiner has requested that Applicants submit a Supplemental Reissue Oath/Declaration, Applicants note that it is submitted herewith.

**IV. Conclusion**

Applicants submit that the present claims are patentable and respectfully request their timely allowance.

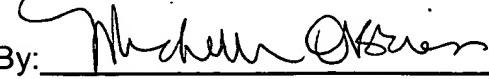
If the Examiner has any questions, she is respectfully requested to contact the undersigned at 202-408-4307.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

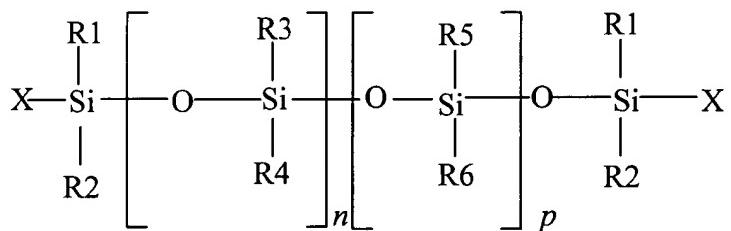
Dated: December 6, 2005

By:   
\_\_\_\_\_  
Michelle E. O'Brien  
Reg. No. 46,203

**Attachment:** Appendix A, showing changes to claims 79, 117, and 141 as presented herein, relative to previously presented claims.

## **APPENDIX A: CHANGES TO CLAIMS 79, 117, and 141**

79. A cosmetic composition comprising from 2% to 50% of at least one silicone gum, at least one crosslinked silicone, at least one pigment in an amount ~~up to ranging from 0.5% to 15%, at least one filler in an amount up to 30%~~, and at least one gelling agent, wherein said at least one silicone gum is of the formula:



in which

R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;

R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;

X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and

n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and

wherein said cosmetic composition is anhydrous and water-resistant.

117. A cosmetic composition comprising:

~~at least from 2% to 50%~~ of at least one silicone gum;

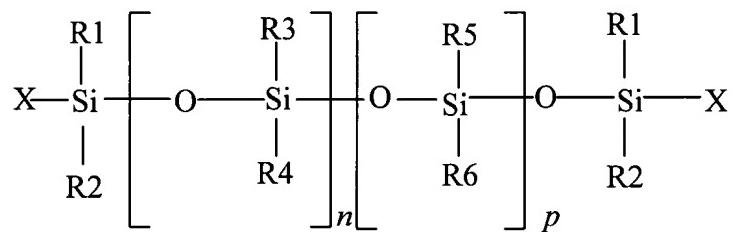
at least one crosslinked silicone;

at least one gelling agent;

optionally at least one filler in an amount up to 30%; and

at least one pigment in an amount ~~up to~~ ranging from 0.5% to 15%;

wherein said at least one silicone gum is of the formula:



in which

R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;

R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;

X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and

n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and

wherein said cosmetic composition is anhydrous and water-resistant.

141. A cosmetic composition comprising:

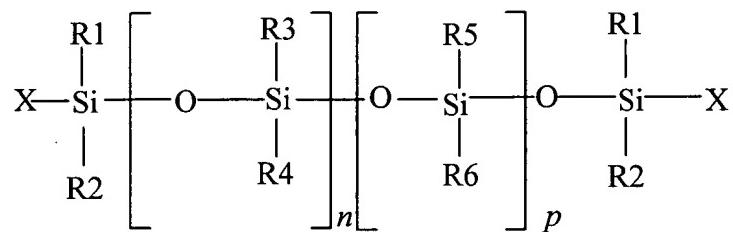
~~at least from 2% to 50%~~ of at least one silicone gum;

at least one crosslinked silicone;

at least one filler in an amount up to 30%; and

at least one pigment in an amount up to ranging from 0.5% to 15%;

wherein said at least one silicone gum is of the formula:



in which

R1, R2, R5 and R6 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms;

R3 and R4 are each independently chosen from alkyl radicals having from 1 to 6 carbon atoms and aryl radicals;

X is chosen from alkyl radicals having from 1 to 6 carbon atoms, hydroxyl radicals, and vinyl radicals; and

n and p are independently chosen so as to give said silicone gum a viscosity of greater than 100,000 mPa·s, and

wherein said cosmetic composition is anhydrous and water-resistant.